

**IN THE U.S. DISTRICT COURT FOR MARYLAND,  
SOUTHERN DIVISION**

BEYOND SYSTEMS, INC.	)	
	)	
Plaintiff	)	
v.	)	Case No.PJM 08 cv 0921
	)	
WORLD AVENUE USA, LLC, et al.	)	
Defendants	)	
_____	)	

**DEFENDANT, WORLD AVENUE USA, LLC’S AMENDED  
LOCAL RULE 104(7) CERTIFICATE**

Pursuant to the Court’s Order issued on September 7, DE 414, Defendant, WORLD AVENUE USA, LLC (“WAUSA”) hereby submits its fully compliant Local Rule 104(7) Certificate concerning its Motion to enforce this Court’s Order at Docket Entry 212 and for an award of sanctions and states that it made good faith efforts on multiple occasions both before and after the filing of the motion to work out the subject matter of the motion.

Specifically, on April 15, WAUSA sent a letter to Plaintiff BEYOND SYSTEMS, INC. (“BSI”) memorializing the Court Order at DE 212 and reminding BSI that WAUSA expected that BSI’s compliance would be forthcoming. A copy of the letter is attached to the Motion as Exhibit “B.”

Later, on April 29, WAUSA requested compliance with the Court Order, and warned that it would be filing a motion during the first week of May 2010. A true and correct copy is attached to the Motion as Exhibit “C.” In lieu of filing a Motion during the first week of May

2010, WAUSA allowed still further time for compliance by BSI with the Court's Order at DE 212.

When more time passed without compliance, WAUSA then sent a third communication on May 13, 2010 asking for BSI to account for its non-compliance with the Order. *See* Exhibit D attached to the Motion.

When BSI's response to the May 13<sup>th</sup> communication again did not contain the requested information in compliance with the Order, WAUSA again granted still more time to comply until the morning of Monday, May 17, 2010. The response did not contain "the status of production for each non-party, and a summary of any discussions held regarding the efforts to obtain the requested materials subsequent to the service or attempted service of each subpoena." The response further did not contain "complete copies of materials received in response to any subpoenas issued." The response also did not contain "[f]or any non-party who has not responded to Plaintiff's subpoena, Plaintiff shall immediately notify said non-party that the Court has quashed the subpoena and that they should not produce the requested material."

Telephone conferences concerning discovery and other case-related issues were held on May 17<sup>th</sup>, May 19<sup>th</sup>, May 20<sup>th</sup> and 21<sup>st</sup>. On the telephone on May 17<sup>th</sup> was Sanford M. Saunders, Jr. on behalf of WAUSA, and Stephen H. Ring on behalf of BSI. On the telephone on May 19<sup>th</sup> was Sanford M. Saunders, Jr., and Nicoleta Burlacu on behalf of WAUSA and Stephen H. Ring on behalf of BSI. Following the May 19<sup>th</sup> telephone conference, BSI's counsel sent an e-mail

purporting to summarize part of the call and acknowledged that there were “motions to compel in both directions.” On the telephone on May 20<sup>th</sup> was Sanford M. Saunders, Jr. on behalf of WAUSA and Stephen H. Ring on behalf of BSI; this was a brief call. A further telephone conference call was held on Friday, May 21<sup>st</sup> between Sanford M. Saunders, Jr. and Stephen H. Ring to discuss case-related issues. On either May 19<sup>th</sup> or May 21<sup>st</sup>, or both, the topic of BSI’s failure to produce documents and disclose of information in compliance with the Order at DE 212 was specifically raised. Counsel for BSI indicated that co-counsel, Michael S. Rothman, was working on the matter, but the issue was not resolved on the telephone call.

Not until May 22<sup>nd</sup> at 12:51 a.m. and 1:08 a.m. did BSI provide any semblance of attempting to comply with the Order entered at DE 212. Once that production was made on May 22<sup>nd</sup>, counsel for WAUSA promptly responded on Monday, May 24<sup>th</sup>, that the production was insufficient and raised some of the reasons why it was insufficient. The production remains incomplete to this day.

Therefore, WAUSA met the requirements of Local Rule 104.7 as counsel conferred by telephone, but an agreement could not be reached. WAUSA should not have had to raise this matter before the Court, but BSI has ignored attempts to resolve the situation on multiple occasions.

Dated: September 12, 2010.

Respectfully submitted,

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